

REMARKS

This responds to the Office Action mailed on May 25, 2006, and the references cited therewith.

Claim 10 is amended, no claims are canceled, and no claims are added; as a result, claims are now pending in this application.

Election of Species

In the Restriction Requirement mailed May 20, 2003, the Examiner stated that the present application contains claims directed to patentably distinct species of the claimed invention. The Examiner then went on to state that the species could be grouped into two groups of species (A and B), with six species in Group A and three in Group B. The Examiner further stated that none of the current claims were generic and that Applicant should "elect a single disclosed species from each group (e.g., Species A6 and Species B3) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

In the Office Action mailed September 10, 2003, the Examiner stated that none of the species he previously labeled as patentably distinct were patentably distinct. He maintained this position in the Office Action mailed May 25, 2006.

Applicant has and will treat this as a withdrawal of the species-based restriction requirement. Applicant respectfully submits that there is no requirement in the MPEP for Applicants to point out why arbitrarily defined species that the Examiner initially identified as patentably distinct are indeed patentably distinct when the Examiner subsequently determines that he was wrong in his initial designation. See, e.g., M.P.E.P. 808.01(a). Applicant retains the right to pursue claims to aspects of the inventions shown in the various drawings.

Applicant as Lexicographer

The Examiner again returns to his attempt to force Applicant to point out those claim terms where Applicant wishes to be his own lexicographer. Applicant respectfully declines and instead respectfully requests that the Examiner interpret the claim terms with their "broadest

reasonable interpretation consistent with the specification.” This is consistent with the court in *Hyatt*, which stated that “during examination proceedings, claims are given their broadest reasonable interpretation *consistent with the specification*.” *In re Hyatt*, 211 F.3d 1367, 1372, 54 U.S.P.Q.2D (BNA) 1664, 1667 (Fed. Cir. 2000) (emphasis added) (“During examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.”; citing *In re Graves*, 69 F.3d 1147, 1152, 36 U.S.P.Q.2D (BNA) 1697, 1701 (Fed. Cir. 1995); *In re Etter*, 756 F.2d 852, 858, 225 U.S.P.Q. (BNA) 1, 5 (Fed. Cir. 1985) (en banc)).

Applicant reserves the right to state that they have acted as their own lexicographer, should patentability of the present application turn on the issue. Applicant is not currently aware of any such issue.

§112 Rejection of the Claims

Claims 16-22, 25-28 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

The Examiner stated that the term “access restriction system” in claims 16 and 26 is unclear. Applicant respectfully submits that the term “access restriction system” is introduced at p. 4, lines 7-19, is shown in Figs. 4-7, and is described, for example, at p. 10, line 28 through p. 11, line 9 and at p. 12, lines 10-22.

The Examiner stated that claims 25-28 are indefinite since the “means for transferring information...” in claims 25-28 could be spread over one or more servers. Applicant intends claims 25-28 to claim terminal management systems in which the “means for transferring information...” are the structures shown in the specification and the equivalents thereof. It is conceivable that the means for transferring information could be software and/or hardware executing in a single computer or portions of the software and/or hardware could be spread across two or more computers.

Applicant respectfully submits that claims 16-22 and 25-28, as written, do particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully requests reconsideration and asks that the Examiner telephone Applicant’s below-listed representative if further clarification is needed.

§103 Rejection of the Claims

Claims 1-10, 12-22 and 25-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Keillor et al. (U.S. Patent No. 5,917,433) in view of Klanke (U.S. Patent No. 6,313,791) and Paradox for Window's User's Guide.

According to the Examiner,

Keillor discloses a computer system having a trailer tracking program (which tracks assets) which receives information (status) regarding the trailer and stores the information in a record (inherent); a plurality of terminals (inherent in any trucking operation); a terminal interface (the interface to 22); a terminal management system (the operating system of each terminal); an access restriction system (inherent in all wireless networks). Keillor does not necessarily disclose a gate restriction.

According to *M.P.E.P.* § 2141, which cites *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986), a series of steps must be taken when applying 35 U.S.C. § 103. First, the claimed invention must be considered as a whole. Second, the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination. Third, the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. Fourth, obviousness is determined using a reasonable expectation of success standard. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. *M.P.E.P.* § 2141 (citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966)).

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d, 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

Claims 1-10 are directed to a trailer transport system for tracking trains having a plurality of rail cars, wherein each rail car can transport one or more trailers. The trailer transport system

claimed includes a computer system (12) and two or more train terminals (14). The computer system includes a trailer tracking program, wherein the trailer tracking program receives information regarding a trailer to be transported and stores the information in a record. Each terminal includes a terminal management system communicatively connected to the computer system, wherein the terminal management system pulls up the record corresponding to the trailer to be transported when the trailer arrives at the terminal and modifies the record to reflect the trailer's transportation status.

The Examiner stated that although Keillor does not necessarily disclose a gate restriction, Klanke discloses the gate restriction. "Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Keillor as taught by Klanke to include Klanke's access restriction system."

The Examiner has failed to establish a prima facie case of obviousness as required by the MPEP and by *Fine*. There is no access restriction system in claims 1-8, 12, 13 and 25-28. Since it does not appear that Klanke is relevant to the rejection of claims 1-8, Applicant is left, then, with what appears to be an obviousness rejection of claims 1-8, 12, 13 and 25-28 based solely on Keillor. The rejection fails, however, to analyze the differences between Keillor and claims 1-8, 12, 13 and 25-28 as required by statute and by the MPEP. As previously pointed out in the Response to the Office Action of September 10, 2003 and in the Appeal Brief mailed June 13, 2005, there are a number of differences between Keillor and what Applicant claims as his invention.

Keillor describes a trailer tracking program. As can be seen in Fig.1 of Keillor, and as described at col. 5, line 50 through col. 7, line 65, an asset monitor 14 is mounted to each container. Each asset monitor communicates with a remotely located central station 12 "so as to provide the central station with information relating to the container with which the asset monitor is associated". Col. 5, lines 62-67. Asset monitor 14

preferably includes a sensor interface 20, such as a multi-port input/output interface, for providing communications with at least one, and more commonly, several sensors 22 which are associated with [the container]. Each sensor is adapted to monitor a predetermined condition or event and to provide a predetermined type of sensory signals. For example, the sensors can include temperature sensors disposed within predetermined portions of the trailer in order to monitor the temperature within the respective portions of the trailer.

Col. 6, line 62 through col. 7, line 4. Door position sensors and other types of sensors, including a GPS receiver 26, are also described. A first communications link between each asset monitor 14 and the central computer 12 communicates the conditions sensed by the sensors. Based upon the information provided via the first communications link, the central station can monitor the position of the trailer and status of the trailer and its contents. Col. 8, lines 35-38.

In contrast, Applicant describes, and claims in claim 1, a trailer transport system having a computer system and a plurality of terminals. Trailers enter and exit each terminal. Each terminal includes a terminal management system communicatively coupled to the computer system. The terminal management system “pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer’s transportation status.” Claim 1.

Applicant previously acquiesced to the Examiner’s statement that trucking operations typically operate out of more than one terminal. That is, trucks, as well as other vehicles, often travel from one location on a transportation route to another. The Examiner has failed, however, to show a teaching in Keillor of equipping each trucking terminal with a terminal management system or of equipping that terminal management system such that it “pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer’s transportation status” as described by Applicant and claimed in claim 1. The Examiner instead makes a comment in passing that each terminal has an operating system and that the operating system of each terminal is its terminal management system. There is no support for this assertion in any of the myriad of references cited and considered by the Examiner. In addition, Applicant fears that the Examiner is confusing computers, which usually have a computer terminal and an operating system, with the transportation terminals described and claimed by Applicant.

Since the Examiner has failed to show a teaching or description in Keillor for at least two limitations of claim 1, the Examiner has failed to establish a *prima facie* showing of obviousness for claim 1.

In addition, claims 2-8 are dependent on claim 1 and inherit all the limitations of claim 1. The Examiner has, therefore, failed to establish a *prima facie* showing of obviousness for claims 4-8. Reconsideration and allowance of claims 1 and 4-8 is respectfully requested.

Claims 9 and 10 do claim a terminal management system having an access restriction system. The Examiner stated that although Keillor does not necessarily disclose a gate restriction, Klanke discloses the gate restriction.

Klanke describes a method of limiting mobility of a vehicle equipped with a global positioning system (GPS). According to Klanke, his system includes memory capable of receiving a set of grid coordinates used to define an area within which the vehicle is to operate. The coordinates define what Klanke terms "an electronic fence." If the vehicle leaves the predefined area, audio, visual and ignition control alarms can be used to limit or stop vehicle operation outside the predefined area.

As noted above, the claimed invention must be considered as a whole. That is, each of the limitations of the claims must be considered when making an obviousness-based rejection. The references must also be considered as a whole and must suggest the desirability and thus the obviousness of making the combination. Here, the Examiner failed to show a teaching or suggestion in Klanke that would lead one to adapt the electronic fence of Klanke to the access restriction system described and claimed by Applicant. In addition, as noted above in the discussion of claim 1, the Examiner failed to show any teaching or suggestion of a terminal management system in any of the references. Finally, the Examiner failed to show a teaching, suggestion or motivation in any of the references that would lead one of skill in the art at the time of the invention to combine the electronic fence of Klanke with the electronic monitoring system of Keillor to form the trailer transport system described by Applicant and claimed in claims 9 and 10, or the gate controller that operates in conjunction with the computer system to restrict access as described by Applicant and claimed in claim 10. Reconsideration and allowance of claims 9 and 10 is respectfully requested.

The Examiner has also failed to show a system for tracking movement of a trailer as required by claims 12 and 13. Once again, neither claim 12 nor 13 includes an access restriction limitation. Therefore the rejection based on the combination of Keillor and Klanke makes little sense. In addition, the Examiner has failed, for example, to show a teaching in Keillor of equipping each trucking terminal with a terminal management system or of configuring the terminal management system such that it "tracks arrivals and departures of the trailers from the terminal and modifies the information stored in the data storage system as a function of said

arrivals and departures” as described by Applicant and claimed in claims 12 and 13. The Examiner has, therefore, failed to establish a *prima facie* showing of obviousness for claims 12 and 13. Reconsideration and allowance of claims 12 and 13 is respectfully requested.

Claims 14-22 do claim a system for tracking movement of a trailer in which the system does have an access restriction system.

Keillor and Klanke are discussed above.

Once again, the Examiner has failed to show a teaching or suggestion in Klanke that would lead one to adapt the electronic fence of Klanke to the access restriction system described and claimed by Applicant. In addition, as noted above in the discussion of claim 12, the Examiner failed to show any teaching or suggestion of a terminal management system in any of the references. In addition, the Examiner has failed to show a teaching or suggestion in any of the references that would lead one to install an access restriction system at each terminal and have the access restriction system modify the information stored in the data storage system as a function of arrivals and departures from the terminal as described by Applicant and claimed in claims 16-22. Finally, the Examiner failed to show a teaching, suggestion or motivation in any of the references that would lead one of skill in the art at the time of the invention to combine the electronic fence of Klanke with the electronic monitoring system of Keillor to form the system for tracking movement of a trailer described by Applicant and claimed in claims 14-22, or the use of a web server with such a system to reserve slots on trains as described by Applicant and claimed in claim 19, or the use of a wireless handheld unit within an access restriction system to control movement within the terminal as described by Applicant and claimed in claim 22.

Reconsideration and allowance of claims 14-22 is respectfully requested.

Finally, the Examiner has failed to show the terminal management system claimed by claims 25-28 in any of the cited references. Once again, claim 25 fails to include any kind of access restriction limitation. Therefore the rejection based on the combination of Keillor and Klanke makes little sense.

In addition, although claims 26-28 include an access restriction system limitation, none of the references cited describe or suggest a terminal management computer communicatively coupled to a network interface, wherein the terminal management computer includes means for transferring information about trailers being transported through the network interface to the

computer system and means for receiving information about trailers being transported from the computer system through the network interface as required by claims 25-28. In particular, the Examiner has failed to show a teaching, suggestion or motivation in any of the references that would lead one of skill in the art at the time of the invention to combine the electronic fence of Klanke with the electronic monitoring system of Keillor to form the terminal management system described by Applicant and claimed in claims 25-28. The Examiner has, therefore, failed to establish a *prima facie* showing of obviousness for claims 25-28. Reconsideration and allowance of claims 25-28 is respectfully requested.

Claim 2 was alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over Keillor et al. (U.S. Patent No. 5,917,433); Klanke (U.S. Patent No. 6,313,791); and Paradox for Window's User's Guide; in view of Nijenhuis (PCT/NL98/00128).

As noted above, claim 2 does not include an access restriction limitation. Therefore the rejection based on the combination of Klanke with Keillor and Nijenhuis makes little sense, since Klanke adds nothing to the combination of Keillor and Nijenhuis. Regardless, Applicant respectfully submits that claim 2 is dependent on claim 1 and inherits all the limitations of claim 1. As noted above, the Examiner has failed to show a teaching in Keillor of equipping each terminal with a terminal management system that "pulls up a record corresponding to the trailer being transported when the trailer arrives at the terminal and modifies the record to reflect the trailer's transportation status" as described by Applicant and claimed in claim 1. Nijenhuis provides no such teaching. Furthermore, the loading platform described in Nijenhuis is not the loading pad described by Applicant and claimed in claim 2. For instance, the loading platform of Nijenhuis does not cross "the track to facilitate rapid loading and unloading of trailers from the train" as required in claim 2. Since limitations of claim 2 cannot be found in either of the cited references, the Examiner has failed to establish a *prima facie* showing of obviousness for claim 2. Reconsideration of claim 2 is respectfully requested.